Supreme Court, U.S.
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In The
Supreme Court of the United States

J. MAC BARBER,

Petitioner,

v.

CATHY COX, in her official capacity as Secretary of State of Georgia,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Georgia

PETITION FOR A WRIT OF CERTIORARI

GEORGE BRIAN SPEARS
Counsel of Record
Georgia Bar No. 670112
Atlanta, Georgia 30306
404-872-7086

NICKOLAS P. CHILIVIS
Georgia Bar No. 124800
CHILIVIS, COCHRAN, LARKINS & BEVER, LLP
3127 Maple Drive, N.E.
Atlanta, Georgia 30305
404-233-4171

Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED

1. In 1998, the State of Georgia adopted one year district residency requirements for posts of the Public Service Commission for its members and concurrently retained a system of staggered terms of office. Its members are elected on a state-wide basis. Petitioner Barber has continuously resided in the District for which elections are to be held in November of 2002. However, he moved from one county within that district to another county within that district ten months before the November election. As a result of redistricting in April of 2002, Barber's former county of residence is no longer within the district to which he qualified to be a candidate. The Georgia Supreme Court removed Barber from the primary election ballot in August of 2002, six days before the primary election, ruling that he had not been continuously a resident of the newly configured electoral district for a full year prior to the November, 2002, election. The question presented is whether the application of the one year durational residence requirement of Georgia Law, as applied to the Petitioner, resulted in a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

2. Currently available census information reflects that up to 43.3 million Americans change their residence in any given year. Where imposition of one year residency requirements can have the effect of disqualifying many thousands of otherwise qualified eligible office seekers in Georgia elections, and indeed had the effect of disqualifying Petitioner Barber, the question presented is whether Georgia's invocation of a one year durational residence requirement must serve a "compelling state interest."

QUESTIONS PRESENTED – Continued

3. This court's jurisprudence concerning durational residency requirements in the area of voter eligibility and candidate qualifications has resulted in considerable discrepancies in the decisions of the Courts of the United States and the Courts of the States when called upon to determine the constitutionality of durational residency requirements for state-wide elective office. Although it appears that this Court requires application of a "strict scrutiny" test to the constitutionality of State durational residency requirements as applied to candidate eligibility, the test has been subjected to dramatically disparate interpretation. The question presented is whether a compelling state interest is served by Georgia's one year durational residence requirement for candidates who, although statutorily required to reside for one year within a prescribed district, nevertheless are elected by the voters of the state as a whole.

LIST OF PARTIES

The caption contains the names of all parties to the proceeding which are as follows:

J. MAC BARBER

CATHY COX, in her official capacity as Secretary of State, State of Georgia

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OPINIONS BELOW

The decision of the Supreme Court of Georgia was reported as follows:

> CATHY COX, Secretary of State, Respondent-Appellant, v. J. MAC BARBER, Petitioner-Appellee, 568 S.E.2d 478; 2002 Ga. LEXIS 629; 2 Fulton County DR 2444 (2002).

The decision of the Georgia Supreme Court was issued on August 14, 2002.

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on August 14, 2002. This Court has discretionary jurisdiction over this cause by virtue of 28 U.S.C. § 1257.

PRIMARY CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

The relevant constitutional provisions involved are:

AMENDMENT XIV, § 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny

to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Course of Proceedings

On June 21, 2002, J. Mac Barber submitted a Declaration of Candidacy to qualify as a candidate of the Democratic Party for the Public Service Commission [hereinafter, PSC], District 4. Although candidates for the District 4 post must reside within the district, they are elected state-wide. Barber's eligibility to stand for election was challenged by Lauren "Bubba" MacDonald, the only other candidate who had filed as a candidate in the Democratic Primary for District 4. The primary was scheduled to occur on August 20, 2002. MacDonald charged that Barber had not met the durational residency requirements of Georgia law for candidates for the PSC. The State of Georgia's Office of State Administrative Hearings conducted an evidentiary hearing upon the challenge. On July 30, 2002, the Administrative Law Judge issued an Initial Decision in which he declared that Barber was disqualified because " . . . he will not have lived in the current District 4 for one year at the time of the General Election in November 2002."

On July 31, 2002, the Secretary of State for the State of Georgia, Cathy Cox, issued a decision by which she adopted the conclusions of the Administrative Hearing Officer, and ordered that Barber's " . . . name shall be stricken from the Primary Ballots for this race, and . . . any votes cast for Respondent [Barber] shall not be

counted and such vote shall be void and of no effect." (App. 20).

On August 6, 2002, Barber appealed the decision of the Secretary of State pursuant to Georgia law by filing a Petition in the Superior Court of Fulton County, Georgia. The Superior Court granted Barber's Petition and declared that the application of Georgia's residency requirements to Barber's candidacy was unconstitutional as applied, being in contravention of the Equal Protection Clause of the United States Constitution. The court directed Cox to ensure that Barber's name was on the primary ballots for the District 4 seat on the PSC.

The Secretary of State immediately petitioned the Georgia Supreme Court for discretionary appeal and for expedited consideration. Following the grant of Cox's petition for discretionary appeal, the Supreme Court of Georgia issued a per curiam opinion on August 14, 2002, by which it reversed the ruling of the Superior Court, and ruled that the manner by which the one year residency requirement impacted Barber did not deny him equal protection under the United States Constitution or the Georgia Constitution.

Factual Background

The PSC consists of five elected members. Prior to the November, 2000 elections, members of the PSC were qualified for election to the Commission regardless of the location of their residency within the State. In 1998, the General Assembly adopted legislation which for the first time divided the state into five PSC districts, and required that: "In order to be elected as a member of the commission from a Public Service District, a person must have

resided in that District for at least 12 months prior to election thereto." O.C.G.A. § 46-2-1(b). However, the commissioners continue to be elected on a state-wide basis. The first PSC election affected by the residency requirement was held in 2000, more than two years after the districts were created.

The 1998 law also provided that the terms of the commissioners from the respective districts would be staggered: elections would be held for Districts 3 and 5 in November 2000, for Districts 1 and 4, in November of 2002, and for District 2 in November of 2004.

In April of 2002, approximately eight months prior to the November elections, the Georgia legislature reconfigured the territory encompassed by the respective districts.[1] Counties and parts of counties were shifted from one district to another. Prior to April 11, 2002, District 4 included both Jackson County and Banks County. Barber

[1] The timing of the drawing of the PSC districts was, and is, a completely arbitrary process. The "district" system of PSC election is of recent statutory origin, and the districts themselves were only adopted in 1998. The candidates for the PSC are elected by state-wide election. Therefore, there was no *Baker v. Carr*, 369 U.S. 186, 208, 7 L.Ed.2d 663, 82 S.Ct. 691 (1962) "one person – one vote" compulsion which prompted the redistricting process. The Georgia legislature is authorized to redraw the PSC district lines at any time, even with less than 12 months before the election. Thus the Georgia legislature could easily redraw PSC districts in such a manner as to draw potential challengers to sitting PSC members out of the districts from which such challengers might seek to run. Similarly, the legislature could effectively disqualify even sitting members of the PSC from their positions by drawing them out of the district from which they were elected. O.C.G.A. § 46-2-1(b) requires that Commissioners " . . . must continue to reside in that district during the person's term of office or that office shall thereupon become vacant."

was a resident of Jackson County from December 15, 2000 to January 15, 2002. Barber moved to Banks County on January 15, 2002, intending to present his candidacy for the District 4 PSC post. At the time that Barber moved into Banks County, he had already met the twelve month residency requirement of Georgia law to stand for election to that post on November 5, 2001, and remained so eligible at least until April 11, 2002.

On April 11, 2002, Jackson County – Barber's former county of residence – was removed from District 4. Banks County – Barber's current county of residence – remained within District 4. *There was no point in time between November 5, 2001, and the present, during which Barber was not a resident of PSC District 4.* Despite the continuity of his residency in District 4, he was declared ineligible by Secretary of State Cox, and removed from the ballot by the Georgia Supreme Court's reversal of the decision of the Fulton County Superior Court. As a result of the Court's decision, Barber cannot remain a resident of Banks County should he wish to run for the PSC any earlier than November of 2008. Indeed, he could not have run for any PSC 4 post if he had remained in Jackson County.[2] The conclusion is inescapable that he has been penalized for his intrastate move despite the continuity of his residency within District 4.

In contrast to the law's effect on Barber, a large number of other citizens did not lose the opportunity to be a candidate for the PSC by virtue of the redrawing of the

[2] No election for any PSC post will take place for potential candidates from Jackson County in 2002.

district lines. Citizens of at least three counties – Chatooga, Floyd and Gordon – were afforded two opportunities within two years' time to run for the PSC. Each of those counties were formerly contained within District 5. As residents of District 5, they had the opportunity to run for the PSC in 2000. As a result of the redistricting accomplished by legislative act in April of 2002, residents of those three counties were given yet another opportunity to run for the PSC. The redrawing of District lines permitted persons not previously eligible to run for a PSC post in 2002 the opportunity to do so yet disqualified other persons, such as Barber, who had continuously resided in District 4 throughout the entire twelve month period prior to November 5, 2002.

The Georgia Supreme Court held that Barber was disqualified through application of a "flexible standard" rather than an approach which would compel the state to demonstrate a compelling state interest in order to apply the residency requirement to the candidacy in question.[3] The Georgia Court declared that:

> . . . there is no single standard to apply in evaluating equal protection challenges to residency requirements for candidates. Instead, the Supreme Court has adopted a flexible standard depending on the extent to which the challenged regulation imposes a burden on First and Fourteenth Amendment rights.

(App. 6).

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[3] Barber presented an "as applied" equal protection challenge to the application of Georgia's one year residency requirement.

The court opined that the residency requirement did not place "an unreasonable burden on the right of voters to choose a candidate or the right of Barber to run for public office," (App. 8), and declared that the residency requirement only applied "to a limited number of potential candidates: the persons who moved into the relevant district since last November." (App. 7). The court opined further that Barber could simply "present himself to the voters as a candidate for the PSC in the 2004 elections."[4] (App. 7). In so reasoning, the Court failed to consider the inherent inequality and unfairness generated by the redistricting process – a process which resulted in permitting persons from a number of Georgia Counties who had only resided in District 4 for less than a year (the county residents moved into District 4) to become a PSC candidate, but which prohibited Barber, a resident of well over eighteen months to likewise become a candidate.[5]

By failing to require that the State of Georgia establish a compelling state interest in the particular application of the residency requirement to Barber, the Supreme Court committed error which can only be corrected by this Court.

The realignment of the counties which comprised District 4 did more than simply move one county [Jackson]

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[4] It must be noted, however, that if redistricting occurs again, Barber would be further disqualified.

[5] It is important to note that Barber was born in Banks County, his current county of residence. In addition, Barber has previously served as a member of the State's Public Service Commission and as a member of the State's Legislature.

out of the District and retain another [Banks]. Ten counties previously contained within District 4 were removed from its territorial description. All of the residents of those ten counties were thereby precluded from becoming a candidate for the PSC in calendar year 2002. *Compare, Headlee v. Franklin County Board of Elections,* 368 F.Supp. 999 (D.C. Ohio 1973) (one year residency requirement for members of village legislative authority, as applied, in view of recent annexations, would have precluded almost one half of village from seeking public office until next election violating equal protection). Contrary to the assertion of the Georgia Supreme Court, the limitation resulting from the redrawing of the district lines did not apply merely "to a limited number of potential candidates."

In declaring that Barber had the option of simply offering himself as a candidate for the PSC again in 2004, the Georgia Supreme Court completely disregarded the fact that the next election for District 4 would not occur until 2008. Members of the PSC serve six year terms. The court's decision not only punished Barber for his intra-district move occurring in January of 2002 by removing him from the ballot for 2002; it effectively conditioned his standing for election upon his making another move in his residence if he wished to stand as a candidate in 2004.

The court's "flexible approach" allowed it to avoid the fact that none of the State's proffered justifications for banning Barber's candidacy were served by the one year residency requirement. The Court reasoned that the "representative form of government" was served by the requirement, noting the following interests: 1) candidates would be "familiar with the problems" of the persons within the district; 2) voters would be exposed to the

character and views of the candidates; and, 3) elected representatives would have "at least a minimum amount of ties to the community." (App. 6). The "flexible approach" utilized by the Court became nothing more than the traditional "rational basis" approach for evaluating legislation in the face of non-suspect equal protection classifications or discrimination, and failed to genuinely consider the fundamental right at stake.

The court approached these factors as if Barber would be elected solely by the voters of District 4. *Yet the PSC election is conducted on a state-wide basis.* Although Barber would have been elected "from" District 4, he would have been elected "by" the voters of the entire state. The voters of the entire state share the same interest in being exposed to the character and views of a PSC candidate from District 4 as do the actual residents of that District. Similarly, a candidate elected on a state-wide basis has as deep a need to be "familiar with the problems" of the residents of the entire State of Georgia as the problems of residents of District 4.

Having been a resident of the actual District 4 continuously from December of 2000 through this day, Barber has more than a "minimum amount of ties to the community." His "ties to the community" far outstripped the "ties" to District 4 of the residents of the counties who were only added to the District as of April of 2002. Residents of Chatooga, Floyd and Gordon – suddenly made eligible to run for the District 4 PSC post would not have had any particular "familiarity" with District 4, nor would the voters of District 4 have had any particular familiarity with their character or views. Nevertheless, with less than eight months' residency in District 4, residents of these three counties were fortuitously made eligible to stand as a candidate for the post, while Barber was disqualified.

The error in the Court's approach is further borne out by the heavy reliance which it placed upon its own decisional law construing the differently described residency requirements for members of the Georgia General Assembly. Candidates for those offices must "have been legal residents of the *territory embraced within the district* from which elected for at least one year," (App. 3, 4), citing Ga. Const. Art. III, § II, ¶ III. Candidates for such offices are elected on the basis of the votes of those electors who reside in their respective districts. Thus the interests to which the Court pointed as being served by imposition of the one year residency requirement at least made more sense for candidates for such offices than for the PSC post sought by Petitioner. In Petitioner's case, he would be a candidate running for election on a state-wide basis. The justification for his particularized tie to District 4 is greatly diminished, and the residency requirement as applied to him serves little, if any, of the interests cited by the Court, and thus deprived him of the equal protection of the laws.

The Georgia Constitution provides that candidates for state assembly must have been residents "within the territory embraced within the district for at least one year," (Georgia Constitution of 1983, Art. III, Sec. II, Para. III(b)) whereas the PSC statute declares that a candidate "must have *resided in that district* for at least 12 months prior to election thereto." O.C.G.A. § 46-2-1. The difference between the language of the Constitution, and the statute is of critical importance. Barber has had actual and continuous residency "in that [the Fourth] District" for over twelve months. The current district lines were only drawn eight months prior to the election, guaranteeing that any citizen who moved intra district after November

of 2001 would be disqualified from running for the PSC in 2002. Also, because the current district as reconfigured with the elimination of some counties and the addition of others has only existed since April 11, 2002, no one will have resided in the current district for at least twelve months prior to the November, 2002, election.

The legal test for determining the constitutionality of the application of the 12 month residency requirement for eligibility to run for the PSC is whether it serves a compelling state interest. *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184, 99 S.Ct. 983, 990 (1979) ("When such vital individual rights are at stake, a State must establish that its classification is necessary to serve a compelling interest."); *Chimento v. Stark*, 353 F.Supp. 1211 (D.N.H. 1975) (three judge panel), *aff'd without op.*, 414 U.S. 802, 38 L.Ed.2d 39, 94 S.Ct. 125 (1973); *Sununu v. Stark*, 383 F.Supp. 1287 (D.N.H. 1974) (three judge panel), *aff'd without op.*, 420 U.S. 958, 43 L.Ed.2d 435, 95 S.Ct. 1346, (1975); *Robertson v. Bartels*, 150 F.Supp.2d 691 (D.C.N.J. 2001), *aff'd without op.*, 122 S.Ct. 914, 151 L.Ed.2d 881 (2002). Proper application of the "compelling state interest" test to the circumstances of Barber's candidacy should have resulted in finding that the residency requirement, as interpreted by Secretary of State Cox, not only resulted in a denial of Barber's right to stand for office, but was unconstitutional as applied to him.

When a residency requirement is coupled with an alteration of political boundaries so that, as here, a candidate who resides in a district – and has resided in that district continuously prior to realignment – is denied access to a ballot merely because his place of former residence had been removed from the district, there can be

no justification for such denial that is consistent with the Fourteenth Amendment, and such application of residence requirements should be held unconstitutional as applied.

REASONS FOR GRANTING THE WRIT

A. The Writ should be granted because a decision by this Court is needed to resolve apparent inconsistencies in decisions of the Federal Courts and Courts of the States regarding whether the imposition of residency requirements upon candidates may only be justified by a showing of compelling state interest.

State and federal courts require guidance with respect to whether a compelling state interest must be shown in order to impose and enforce residency requirements upon candidates for office. The Supreme Court has not yet addressed the question of the appropriate standard of review for cases involving durational residency requirements for candidates. As pointed out by the Court in *Joseph v. Birmingham*, 510 F.Supp. 1319 (E.D. Mich. 1981):

> The substantial majority of these courts [considering the constitutionality of residency requirements for candidates], and apparently all the courts in this Circuit which have faced the question, have held that strict scrutiny must be applied to durational residency requirements for candidates. Id. (collecting cases). Howlett v. Salish and Kootenai Tribes, 529 F.2d 233, 242-243 (9th Cir. 1976); Alexander v. Kammer, 363 F.Supp. 324, 326 (E.D. Mich. 1973).

Other courts *do not* apply strict scrutiny to candidate durational residency requirements. See, for example, *Russell v. Hathaway*, 423 F.Supp. 833 (N.D. Texas 1976) (three judge court) and *Daves v. City of Longwood*, 423 F.Supp. 503 (M.D.Fla. 1976) (both holding that the mere rationality test is appropriate in these circumstances). *Compare*, *Corrigan v. City of Newaygo*, 55 F.3d 1211 (6th Cir. 1995) (ordinance disqualifying candidates for failure to pay local taxes is not completely arbitrary under rational basis review). Reflecting the disparity of judicial interpretations in this field of law are the decisions of other courts considering challenges to the disenfranchisement of voters by virtue of the combined effect of redistricting and staggered terms. Some courts have held that they are to utilize a "rational basis" standard of review under these circumstances. See, *Donatelli v. Mitchell*, 2 F.3d 508, 514 (3rd Cir. 1993) (state actions surrounding reapportionment and redistricting for offices with staggered terms subject only to rational-basis review because they did not involve a suspect classification or burden a fundamental constitutional right) (cites omitted).

The Supreme Court of Georgia declared that the constitutionality of residency requirements for candidates was to be evaluated using a "flexible standard depending on the extent to which the challenged regulation imposes a burden on First and Fourteenth Amendment rights." P. 7, Slip op. The Court utilized this "flexible standard" despite the fact that application of the residency requirements precluded Barber from qualifying as a candidate for District 4 for another six years, and left only one lone candidate [the original complaining party, Lauren MacDonald] from which voters could select the Democratic party nominee for the District 4 PSC post.

The Georgia Court's "flexible standard" approach is in stark contrast with the analytical approach employed by other Federal and State Supreme Courts, including decisions of those Courts which have been affirmed by this Court. *Chimento v. Stark*, 353 F.Supp. 1211 (D.N.H. 1975) (three judge panel), *aff'd without op.*, 414 U.S. 802, 38 L.Ed.2d 39, 94 S.Ct. 125 (1973) (compelling interest test); *Sununu v. Stark*, 383 F.Supp. 1287 (D.N.H. 1974) (three judge panel), *aff'd without op.*, 420 U.S. 958, 43 L.Ed.2d 435, 95 S.Ct. 1346, (1975) (compelling state interest); *Robertson v. Bartels*, 150 F.Supp.2d 691 (D.C.N.J. 2001), *aff'd without op.*, 122 S.Ct. 914, 151 L.Ed.2d 881 (2002) (strict scrutiny analysis).

In *Chimento v. Stark*, 353 F.Supp. 1211 (D.N.H. 1975) (three judge panel), *aff'd without op.*, 414 U.S. 802, 38 L.Ed.2d 39, 94 S.Ct. 125 (1973), the Court reasoned that:

> . . . the question [of the standard to utilize in adjudicating challenges to candidate residency requirements – ed.] is resolved judicially by determining what is more important to our form of government; the rights protected by the state law in question or the rights infringed by it.
>
> Where, as here, the law in question poses a barrier to a candidacy of a not insubstantial segment of the community and, to that degree, limits the voters in their choice of candidates, we hold that the stricter standard of review should be applied.
>
> * * *
>
> For cases that dealt with the issue of durational residency requirements for public office and applied the "compelling interest" test, see Stapleton v. Clerk for City of Inkster, 311 F.Supp. 1187

(E.D. Mich. 1970); Hadnott v. Amos, 320 F.Supp. 107 (M.D. Ala. 1970), *aff'd without opinion*, 401 U.S. 968, 91 S.Ct. 1189, 28 L.Ed.2d 318 (1971); Bolanowski v. Raich, 330 F.Supp. 724 (E.D. Mich. 1971); Green v. McKeon, 335 F.Supp. 630 (E.D. Mich. 1971); Mogk v. City of Detroit, 335 F.Supp. 698 (E.D. Mich. 1971); McKinney v. Kaminsky, 340 F.Supp. 289 (M.D. Ala. 1972); Wellford v. Battaglia, 343 F.Supp. 143 (D. Del. 1972); Draper v. Phelps, 351 F.Supp. 677 (W.D. Okl. 1972); and Zeilenga v. Nelson, 4 Cal.3d 716, 94 Cal. Rptr. 602, 484 P.2d 578 (1971). Contra see Gangemi v. Rosengard, 44 N.J. 166, 207 A.2d 665 (1965); Hayes v. Gill, 52 Haw. 251, 473 P.2d 872 (Hawaii 1970); DeHond v. Nyquist, 65 Misc.2d 526, 318 N.Y.S.2d 650 (S.Ct. Albany Cty. 1971); and State ex rel. Gralike v. Walsh, 483 S.W.2d 70 (Mo. 1972).

The Supreme Court of Georgia failed to apply the *compelling state interest test* despite the presence of facts which should have triggered a *Chimento* analysis: the timing of the reconfiguration of the PSC districts, by which persons who resided in the Counties removed from District 4 were summarily precluded from the opportunity to stand as candidates for the PSC office, resulted in a " . . . barrier to a candidacy of a not insubstantial segment of the community . . . " and operated to exclude Barber from the ballot, thus " . . . limit[ing] the voters in their choice of candidates."

The Court's failure to apply the compelling state interest test placed the result of its decision squarely at odds with decisions of other Courts. In *Wenke v. Hitchock*, 6 Cal.3d 746, 100 Cal. Rptr. 290, 493 P.2d 1154 (1972), the California Supreme Court decided a durational residency

limitation issue substantially the same as presented to the Georgia Supreme Court. Citizens of Orange County, California, seeking to become candidates for the County Board of Supervisors were required to have been a resident of the district from which they would be elected for one year before the election. Members of the Board of Supervisors served staggered terms of office. Wenke had been a resident of the First District for over eighteen years. At a time less than one year prior to the next scheduled election, Wenke learned that the location of his residence in the First District was to be included in a different District, the Fourth District, for which (owing to the staggered terms of Commission members) there would be no election in 1972. Intending to retain his opportunity to become a candidate for the Board of Supervisors from the First District, (for which the election was scheduled for 1972) he moved to a new location which remained within the First District after redistricting. Wenke's candidacy for the First District post was rejected by the registrar of voters, and sustained by the initial trial court, on the theory that a candidate could not move and preserve his continuity of residence in the district.

Acknowledging that United States Supreme Court decisional law required that there be a "compelling interest" demonstrated by the state in order to rigidly enforce the one year residency requirement under the circumstances as shown, the California Supreme Court reversed the trial court and held that, in the immediate wake of a redistricting process, a person could effectively "bridge" his district residency with that in the newly configured district to satisfy the one year residency requirement. The Court reasoned that:

> We think that the purpose of the residency requirement would be promoted by permitting a candidate who, prior to his removal therefrom by a redistricting enactment, has resided in a given district for the necessary period of time to run for office in his former district providing he relocates his residence within its boundaries. Every voter in the district as it was constituted before the redistricting resided within the same boundaries as he did. He will undoubtedly be familiar with their problems and needs – certainly as much as the candidate who by fortuity remains in the district unaffected by the change in boundaries. We think it makes good sense to permit him to relocate there and to run for office and that indeed it may thwart the democratic process to insist that he may only run in his new district which may contain relatively few of his former fellow First District residents.

Id., at 754, 755. On the basis of that reasoning, the Court held as follows:

> We hold, therefore, that a person desiring to become a candidate for the office of member of the board of supervisors who has been an elector within a given supervisorial district but will be made a nonresident thereof by redistricting may choose one of two alternatives. He may choose to apply his previous period of residence to his new supervisorial district or to his former supervisorial district to the end of becoming a candidate for such office either in his new district or in his former district. In the event he chooses to be a candidate for the office of supervisor of his former district from which his place of residence will be excluded by such redistricting, in order to preserve his period of residency, he must, prior to

> the effective date of the boundary change, relocate his residence in his former district by moving it to a location therein which has not been removed therefrom by the redistricting.

Id., at 755.

The Georgia Supreme Court's decision is also at odds with the holding of the Court in *Robertson v. Bartels*, 150 F.Supp.2d 691 (D.C.N.J. 2001), *aff'd without op.*, 122 S.Ct. 914, 151 L.Ed.2d 881 (2002) in which the Court applied a "compelling state interest" test to the state's residency requirements for State Assembly. In *Robertson*, the Plaintiffs were initially declared ineligible to become candidates because of a redrawing of the district lines by the State Legislature. The Court declared that:

> The fundamental right at issue is the combined right of persons to run for public office and the right of voters to vote for candidates of their choice. Impairment of that combined right . . . is subject to strict scrutiny and can only be impaired if the impairment furthers significant State interests.

The Court held that the residency requirement for State Senate and State Assembly "does not survive a strict scrutiny analysis." *Id.*, at 698. *Accord*, *Callaway v. Samson*, 193 F.Supp.2d 783 (D.N.J. 2002) (invalidating durational residency requirement of one year for election to local office in as-applied equal protection challenge).

The lack of an overarching standard from this Court for judicial review of durational residency requirements has resulted in inconsistent results from the Courts of the United States to challenges to the one year durational residency requirement such as that at issue here. Some

federal courts have found this length of residency to constitute a violation of equal protection. See, *Robertson v. Bartels*, 150 F.Supp.2d 691 (D.N.J. 2001) (state's one year residency requirement fails to meet compelling state interest and therefore was a violation of equal protection.); *Headlee v. Franklin County Board of Elections*, 368 F.Supp. 999 (D.C. Ohio 1973) (Ohio statute requiring each member of the legislative authority of a village shall have resided in the village for one year next preceding his election held to violate equal protection clause of Fourteenth Amendment.) Other courts have concluded that the one year residential requirement is not a violation of equal protection. See, *Walker v. Yucht,* 352 F.Supp. 85 (D.Del. 1972) (court upholds under reasonable basis test the validity of the requirements of one year in the district to be represented for election to the Delaware general assembly.); *Russell v. Hathaway*, 423 F.Supp. 833 (1976, D.C. Tex.) (requirement that candidate for public office be state resident for one year not violation of equal protection.); *Gilbert v. State*, 526 P.2d 1131 (Alaska 1974) (candidates seeking state legislative office must have one year residency in district from which elected.); *Brewster v. Johnson*, 260 Ark. 450, 541 S.W.2d 306 (Ark. 1976) (requirement that candidates for office of senator or representative have been resident of county or district for one year valid under either reasonable basis or compelling state interest tests.); *Gralike v. Walsh*, 483 S.W.2d 70 (Mo. 1972) (one year residency requirement for office of state senator not violation of equal protection); *White v. Manchin,* 173 W.Va. 526, 318 S.E.2d 470 (W.Va. 1984) (one year durational residency requirement for office of state senator did not deny equal protection.)

Guidance by this Court is necessary to provide uniformity across the courts of the United States in dealing with the proper application of the "compelling state interest" standard to durational residency requirements for elected office. A rule must be fashioned that permits "continuity of residency" eligibility where a candidate has remained continuously within the district from which he or she seeks office even if his or her former residence has been removed from the district through a process of redistricting. One's right to run for office must not turn on the vagaries of redistricting, nor should the exercise of this fundamental right turn upon the particular state in which a citizen resides.

B. The Writ should be granted because the frequency with which citizens of the United States change their residency presents an urgent need for clarification of the standards of law by this Court to ensure that citizens can continue to exercise their fundamental right to stand for elective office, particularly in years surrounding the decennial redrawing of district lines.

There exists "a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications," and a state "may not deny to some the privilege of holding public office that it extends to others on the basis of distinctions that violated federal constitutional guarantees." *Turner v. Fouche*, 396 U.S. 346, 362-363, 24 L.Ed.2d 267, 90 S.Ct. 532 (1970). In the setting of voter durational residency requirements, this Court has observed that: "Durational residence laws penalize those persons who have traveled from one place to another to establish a new residence

during the qualifying period." *Dunn v. Blumstein*, 405 U.S. 330, 334, 335, 31 L.Ed.2d 274, 92 S.Ct. 995 (1972) (footnote omitted).

The number of citizens whose right to run for elected office is foreclosed by application of durational residency requirements is very substantial. According to a report of the U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau issued in May of 2001,

> Between March 1999 and March 2000, 43.4 million Americans moved. Over half (56 percent) of these moves were local (within the same county), 20 percent were between counties in the same state, and 19 percent were moves to a different state. Only 4 percent of movers came from abroad.

Source: "Current Population Reports," by Jason Schachter, U.S. Census Bureau. (App. 25-36). On the basis of these figures, we can conclude that in the year prior to March of 2000, nearly 17 million people moved from one county to another [either intrastate or interstate], with the effect that all of the adult citizens within that group might be precluded from running for any number of elected offices where a state mandates a one year residency requirement for candidacy and where their county may have been shifted from one district to another. The 17 million persons affected by the one year residency requirement marks an increase from a comparable period evaluated by the Census Bureau for the year March 1995 to March 1996. In that year, approximately 14.5 million persons moved from one county to another and from one state to another in that period of time. Source: "Current Population Reports,"

Geographical Mobility: March 1995 to March 1996, By Kristin A. Hansen, Census Bureau. (App. 37-49).

Another component of the 2001 report is very important. The report also found that *the economic and housing status of citizens played an important role in residential mobility*. Nearly 33 percent of renters compared with 9 percent of homeowners moved during the one-year period surveyed. Members of households receiving less than $25,000 annual income were nearly twice as likely to have moved within a one year time frame as households receiving an annual income of $100,000 or more. (Households where income was less than $25,000 moved within the one year period at a rate of 21.1 percent; Households where the income was greater than $100,000 moved within the one year period at a rate of 12.1 percent. (App. 29).

The results of the survey demonstrate that *one year residency requirements* for candidates carry with them the prospect of impacting a significant proportion of potential candidates, and of having a *disparate impact upon citizens on the basis of income*. This Court's concern regarding limitations to candidacy on the basis of income was a fundamental part of the decision in *Bullock v. Carter*, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972). In *Bullock*, the Court considered the constitutionality of state statutes requiring the payment of a filing fee before a candidate could have his name placed on the ballot in a primary election. The Court observed that:

> The effect of this exclusionary mechanism on voters is neither incidental nor remote. Not only are voters substantially limited in their choice of candidates, but also there is the obvious likelihood that this limitation would fall more heavily on the less affluent segment of the community,

> whose favorites may be unable to pay the large costs required by the Texas system. . . . Because the Texas filing-fee scheme has a real and appreciable impact on the exercise of the franchise, and because this impact is related to the resources of the voters supporting a particular candidate, we conclude, as in *Harper*, that the laws must be "closely scrutinized" and found reasonably necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster.

Id., at 144.

The potential adverse impact upon prospective candidates based on their income status cannot be avoided. It underscores the need for this Court to require close scrutiny of residency requirements in order for them to pass constitutional muster. Such adverse impact is compounded in the years immediately following the decennial census, and the redrawing of district lines for all manner of state and local offices. The adverse impact is even greater in those jurisdictions and for those elective bodies where candidates seek elective office for positions which carry staggered terms of office – such as Petitioner Barber or the plaintiff in *Wenke v. Hitchock*, supra. – where relocation of a candidate's former residency into a new district can deprive such prospective candidate of the right to run for office for years.

The impact upon the increasingly mobile citizens of our country of state laws imposing residency requirements calls upon this Court to provide a consistent framework for the evaluation of such laws.

CONCLUSION

This case involves rulings of law by the Georgia Supreme Court that obviously would have been made differently had the case been heard in different state supreme courts, or possibly different federal district courts or circuits. It is in the best interest of furthering the development of the law in the area involving the intersection of the Fourteenth Amendment and state or local candidate residency laws that specific guidance and direction be given by this Court. Failure to accept this case, and correctly and finally settle the issues presented in this case could result in countless and ever increasing numbers of citizens being denied their fundamental right to run for office, and result in a continued plethora of inconsistent judicial rulings.

Petitioner Mac Barber hereby respectfully moves this Court to grant this Petition for Writ of Certiorari in order that substantial justice in an area of tremendous national importance be done.

Respectfully submitted,

GEORGE BRIAN SPEARS
Counsel of Record
Attorney for J. Mac Barber
Georgia Bar No. 670112

1126 Ponce de Leon Ave.
Atlanta, Georgia 30306
404-872-7086

CHILIVIS, COCHRAN, LARKINS & BEVER, LLP

NICKOLAS P. CHILIVIS
Attorney for J. Mac Barber
Georgia Bar No. 124800

3127 Maple Drive, N.E.
Atlanta, Georgia 30305
404-233-4171

In the Supreme Court of Georgia

Decided: AUG 14 2002

S02A1818. COX v. BARBER.

PER CURIAM.

In this election contest, the trial court ordered Secretary of State Cathy Cox to place candidate J. Mac Barber's name on the primary ballot for the district four seat on the Georgia Public Service Commission. We granted the Secretary of State's application for discretionary appeal to consider whether the trial court correctly held that the one-year residency requirement in OCGA § 46-2-1(b) is unconstitutional as applied to Barber. Because the statutory requirement is constitutional and Barber has not resided in district four for twelve months prior to the election, we hold that the Secretary of State properly concluded that he was disqualified from being a candidate for that PSC seat. Therefore, we reverse the trial court.

The Georgia Public Service Commission is a five-member body created under the Constitution of the State of Georgia.[1] OCGA § 46-2-1(a) provides that commissioners are elected statewide for six-year terms. In 1998, the Georgia General Assembly amended OCGA § 46-2-1 to establish that new members elected to the commission must reside within specific districts. Subsection (b) now provides: "In order to be elected as a member of the commission from a Public Service Commission District, a

[1] Ga. Const. of 1983, art. IV, § I, para. I(a).

person must have resided in that district for at least 12 months prior to election thereto."[2]

The legislature made this residency requirement effective for elections for districts three and five in 2000, districts one and four in 2002, and district two in 2004.[3] Following the 2000 decennial census, the Georgia General Assembly amended the statute to change the boundaries of the PSC districts, effective April 2002.[4] As part of the reapportionment process, the legislature moved Jackson County from district four to district two.

In 1999 Barber moved to DeKalb County to run for the district three seat on the PSC. After his defeat, he returned to Jackson County where he was residing in November 2001. The trial court found that Barber became a legal resident of Banks County on January 15, 2002.

In June 2002, Barber qualified to run for the district four seat on the PSC. His opponent challenged his eligibility on the grounds that Barber did not reside in district four and had not resided within the district for the required twelve months. After a hearing, an administrative law judge concluded that Barber did not meet the one-year residency requirement in OCGA § 46-2-1(b). The Secretary of State adopted the ALJ's initial decision as the final agency decision and disqualified Barber as a candidate for the PSC seat in district four.

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[2] OCGA § 46-2-1(b) (Supp.2001).

[3] See OCGA § 46-2-1(d) (Supp.2001).

[4] 2002 Ga. Laws 360.

Barber filed a petition for judicial review in superior court. The trial court concluded that OCGA 46-2-1(b) was unconstitutional as applied to Barber because it disqualified him from seeking the PSC seat on the grounds that he would not reside within the district for one year prior to the general election in November 2002. The trial court ordered the Secretary of State to place Barber's name on the ballots for the August 20 primary election. Because the primary will be held next week, we agreed to give expedited review of this appeal.

1. In construing statutes, courts shall look diligently for the intention of the General Assembly.[5] The words of a statute should be given a reasonable and sensible interpretation to carry out the legislative intent and render the statute valid.[6]

Applying these rules, we interpret the residency provision in OCGA § 46-2-1 as requiring a candidate for the PSC to be a resident of the territory within the district for 12 months prior to the general election. This interpretation is consistent with similar residency requirements in the Georgia Constitution for other state and county offices.[7] The 1983 Georgia Constitution requires members of the Georgia General Assembly to "have been legal residents of the territory embraced within the district from

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[5] OCGA § 1-3-1(1) & (2).

[6] See *Mayor of Hapeville v. Anderson*, 246 Ga. 786, 787, (272 SE2d 713) (1980).

[7] See, e.g., *Griggers v. Moye*, 246 Ga. 578, (272 SE2d 362) (1980) (upholding constitutional and statutory provisions requiring county officers to be a citizen of the county for at least two years immediately preceding the election or appointment).

which elected for at least one year."[8] As the State Attorney General noted in interpreting the comparable provision in the 1976 Constitution, our Constitution does not create any exception to the one-year residency requirement due to reapportionment of the district.[9]

In this case, Barber admits that he was a resident of Jackson County, which is now in district two, in November 2001 and did not attempt to become a resident of Banks County in district four until January 2002. Because Barber was not a resident of the geographic territory in district four during the twelve months prior to the November 2002 general election, he is not eligible to run for the PSC seat in that district in this year's election.

2. In invalidating the residency requirement, the trial court concluded that OCGA § 46-2-1 violated equal protection by disqualifying Barber because he "will not have resided within District 4 as it has been reconfigured since reapportionment (April 11, 2002) for one year prior to the November 5, 2002, General Election." Barber contends that the trial court was correct because district four did not exist for the minimum twelve months specified by the residency requirements of OCGA § 46-2-1(b).

The United States Supreme Court has never considered directly the validity of durational residency requirements for candidates for public office. In considering the filing-fee requirement for candidates, the Court stated: "The right of a party or an individual to a place on a ballot

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[8] See Ga. Const. art. III, § II, para. III.

[9] See 1981 Op. Att'y Gen. 306 (U81-28).

is entitled to protection and is intertwined with the rights of voters."[10] Moreover, the Court noted that in evaluating candidate restrictions "it is essential to examine in a realistic light the extent and nature of their impact on voters."[11]

Lower court opinions are inconsistent on the validity of requirements that a candidate must reside within a district for a specific time.[12] The Supreme Court has summarily affirmed decisions of three-judge panels upholding the seven-year residency requirement in the New Hampshire Constitution for candidates for governor and state senator.[13] Other decisions have struck down much shorter residency requirements imposed on candidates, including a recent federal district court decision that invalidated New Jersey's one-year residency requirement for candidates for the state senate and general assembly.[14]

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[10] See *Lubin v. Panish,* 415 U.S. 709, 716 (94 SC 1315, 39 LE2d 702) (1974).

[11] See *Bullock v. Carter,* 405 U.S. 134, 143 (92 SC 849, 31 LE2d 92) (1971).

[12] See generally John D. Perovich, Annotation, Validity of Requirement that Candidate or Public Officer Have Been Resident of Governmental Unit for Specified Period, 65 ALR3d 1048 (1975).

[13] See *Sununu v. Stark,* 420 U.S. 958 (95 SC 1346, 43 LE2d 435) (1975), aff'g, 383 F. Supp. 1287 (D.N.H. 1974) (three-judge panel); *Chimento v. Stark,* 414 U.S. 802 (94 SC 125, 38 LE2d 39) (1973), aff'g, 353 F. Supp. 1211 (D.N.H. 1973) (three-judge panel).

[14] See *Robertson v. Bartels,* 150 F. Supp. 2d 691 (D.N.J. 2001); see also *McKinney v. Kaminsky,* 340 F. Supp. 289 (M.D. Ala. 1972) (invalidating five-year residency requirement for county commissioner).

In addition, there is no single standard to apply in evaluating equal protection challenges to residency requirements for candidates.[15] Instead, the Supreme Court has adopted a flexible standard depending on the extent to which the challenged regulation imposes a burden on First and Fourteenth Amendment rights.[16] "[W]hen a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions."[17]

Residency requirements for candidates serve the important state interest of supporting our representative form of government. Requiring candidates to live in a district for a reasonable period of time before the election encourages them to become familiar with the problems, needs, and concerns of the people they seek to represent; it also exposes voters to the character, experience, and views of the individuals who seek to represent them. In addition, it ensures voters that their elected representatives will have at least a minimum amount of ties to the community. Arrayed against the state's legitimate interest in having informed voters and candidates is the individual voter's

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[15] See *Woodward v. City of Deerfield Beach*, 538 F.2d 1081, 1082 n.1 (1976) (discussing different standards of review that the United States Supreme Court has applied to equal protection cases involving candidates).

[16] See *Burdick v. Takushi*, 504 U.S. 428, 434 (112 SC 2059, 119 LE2d 245) (1992).

[17] See id. (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (103 SC 1564, 75 LE2d 547) (1983)).

interest in having a choice at the ballot and the candidate's interest in the continued availability of political opportunity.[18]

Our state's residency requirement for the state Public Service Commission is of relatively short duration and applies to a limited number of potential candidates: the persons who moved into the relevant district since last November. Under our interpretation of the PSC statute, it does not disqualify long-time residents of counties that were placed in district four during the reapportionment process. Thus, unlike the case cited by Barber in which almost one half the residents were disqualified from running for village elections due to the village's residency requirement,[19] this case does not involve a substantial number of residents excluded from seeking office or place a severe limitation on the voters' right to choose among candidates running for the PSC. Moreover, Barber has not been deprived of the opportunity to qualify and run for a seat on the PSC; voters in district three had the opportunity to vote for him in the 2000 elections, and he can again present himself to the voters as a candidate for the PSC in the 2004 elections. It is only because of the staggered terms for the five seats on the PSC that he was not able to run from his residence in Jackson County in this year's elections. Finally, there is no evidence in the record that

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[18] See *Lubin*, 415 U.S. at 715 (state's legitimate interest in keeping ballots within manageable limits may not unnecessarily burden an individual candidate's equally important interest in the continued availability of political opportunity and the voters' interest in asserting their preferences).

[19] See *Headlee v. Franklin County Board of Elections*, 368 F. Supp. 999 (S.D. Ohio 1973) (three-judge panel).

the district lines were redrawn to exclude Barber specifically from being a candidate.[20]

For these reasons, we conclude that the residency requirement for the PSC is rationally related to the state's legitimate interests in fostering informed voters and promoting knowledgeable and responsive candidates with ties to the community. The requirement does not place an unreasonable burden on the right of voters to choose a candidate or the right of Barber to run for public office. Therefore, we hold that requiring Barber to reside in district four for twelve months prior to the general election in November has not denied him equal protection under the United States Constitution or the Georgia Constitution.

Judgment reversed. All the Justices concur.

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[20] Cf. *La Porte County Republican Cent. Comm. v. Board of Comm'rs*, 43 F.3d 1126 (7th Cir. 1994) (reversing dismissal of complaint based on claim that residential districts were redrawn for the sole purpose of preventing three individuals from standing for election).

BEFORE THE OFFICE OF
STATE ADMINISTRATIVE HEARINGS
State of Georgia

Lauren "Bubba" McDonald Petitioner	*	
v.	*	**Docket No. OSAH-ELE-CE 0300328-78-WJB**
J. Mac Barber, Respondent.	*	**(Filed Jul. 30, 2002)**

INITIAL DECISION

I. INTRODUCTION

This matter comes before the Tribunal pursuant to a complaint filed by Lauren "Bubba" McDonald ("Petitioner") with the Secretary of State ("the Secretary") under the provisions of O.C.G.A. § 21-2-5(b) challenging the eligibility of J. Mac Barber ("Respondent") to be a candidate for the District 4 seat on the Georgia Public Service Commission ("PSC"). In sum, Petitioner alleges Respondent is not eligible to be a candidate because he does not presently reside in District 4 as it is presently configured, and even if he presently does reside within the district as he alleges, he has not resided within the district for the required one year prior to the General Election in November 2002.

A hearing was held on this matter on July 19, 2002. The Petitioner was represented by Mr. Charles S. Baker. The Respondent was represented by Mr. Harold S. Gulliver and Mr. Nicholas Chilivis.

II. FINDINGS OF FACT

This Tribunal has considered the entire evidence in this case, and based upon a preponderance of the credible evidence, makes the following specific findings of fact.

1.

On June 21, 2000, Respondent submitted a Declaration of Candidacy and Affidavit ("Affidavit") in an attempt to qualify as a Democratic candidate for the PSC, District 4. **(Stipulations of Parties)**.

2.

On May 11, 2002, Petitioner, an elector qualified to vote for the candidate, filed a timely complaint pursuant to O.C.G.A. § 21-2-5(b) with the Secretary seeking to disqualify Respondent on the grounds that he does not meet residency requirements for that office. **(Stipulations of Parties)**.

3.

The Georgia Legislature created the current PSC districts on April 11, 2002. Under the present configurations of the districts, Jackson County is in District 2 and Banks County is in District 4. Prior to the April 11, 2002, reapportionment of the PSC districts, Banks County and Jackson County were both in District 4. A house owned by the Respondent is located at 325 Shankle Heights, Commerce, Georgia which is in Jackson County, Georgia. A mobile home, which the Respondent currently claims is his domicile, is located at 181 Trout Lane, Commerce, Georgia

which is in Banks County, Georgia. **(Stipulation of the Parties).**

4.

The Respondent admits that he changed his domicile to Banks County, a county within the present boundaries of District 4 of the PSC as reapportioned in April of 2002, no earlier than January 15, 2002. This is the date when he states that he changed his domicile from Jackson County, which had previously served as his domicile since December 15, 2000. **(Testimony of Respondent, T. 131, 137).**

5.

Since January 15, 2002, the Respondent has had exclusive use of a bedroom and bathroom in the mobile home located at 181 Trout Lane, Commerce, Banks County, Georgia. The owners of the mobile home, Jeffrey Hixinbaugh and his wife Debra Standridge, also live there. **(Testimony of Respondent, T. 138, 142; Testimony of Debra Standridge, T.196).**

6.

The Respondent has a key to the mobile home at 181 Trout Lane. He keeps his clothes in the bedroom reserved for his use. He spends the night there on a sporadic basis. **(Testimony of Respondent, T.168, 183; Testimony of Standridge).**

7.

The Respondent maintains a residential telephone in his name at 325 Shankle Heights, and this account has been open since 1999. **(Testimony of Joseph Nesber, T. 57-60, Exhibit P-6)**.

8.

The Respondent does not maintain telephone services at the 181 Trout Lane address. He also does not pay utilities bills at this address. Most of his mail comes to a post office box in Commerce; however, recently, he has received some mail at the 181 Trout Lane Address. **(Testimony of Respondent, T. 165, 177)**.

9.

Presently, the Respondent spends several nights a week at the home of a friend, Todd Mize, located in Jackson County at 355 Shankle Heights, Commerce, Georgia; however, he does not have a key to this residence, and he does not keep his clothes there. **(Testimony of Todd Mize, T.90, 96)**.

10.

On May 1, 2000, the Respondent obtained a driver's license with a DeKalb County address **(Exhibit P-1)**. On June 19, 2001, he obtained a driver's license using the 325 Shankle Heights address. **(Exhibit P-2)**. On April 25, 2002, the Respondent obtained another driver's license using the 181 Trout Lane address. **(Exhibit P-3)**.

11.

On May 4, 2001, the Respondent changed his voter registration from DeKalb County to Jackson County using the 325 Shankle Heights address. **(Exhibit R-8)**. On April 25, 2002, the Respondent registered to vote in Banks County using the 181 Trout Lane address. **(Exhibit R-1)**.

12.

On July 6, 2001, the Respondent applied for tag and title for a Ford Taurus in Jackson County using the 325 Shankle Heights address. **(Exhibit R-4)**. On July 2, 2002, the Respondent transferred his car registration from Jackson County to Banks County using the 181 Trout Lane address for the same Ford Taurus. **(Exhibit P-1, R-5)**.

III. CONCLUSIONS OF LAW

1.

O.C.G.A. § 46-2-1 sets out how PSC Commissioners are to be elected. Prior to the 1998 amendments, the Commissioners were elected statewide and did not run from particular districts; thus, there were no residency requirements for candidates for these positions, except that they be residents of the State of Georgia. The 1998 amendments required that the Commissioners reside in five (5) distinct districts while still requiring the Commissioners to be elected in a statewide election. Furthermore after the 1998 amendments, O.C.G.A. § 46-2-1(b) imposed a durational residency requirement by stating that "[I]n order to be elected as a member of the Public Service

Commission, a person must have resided in that district for at least 12 months prior to election thereto."

2.

In his testimony, the Respondent admitted that until January 15, 2002, he had never established residency at an address within District 4 as it has been configured since reapportionment. Thus, clearly the Respondent does not meet the one year residency requirements contained in O.C.G.A. § 46-2-1(b) for a candidate for District 4 of the PSC unless somehow he can be given "credit" for the time he resided in Jackson County before he changed his residency to Banks County. The Respondent has argued that he should be given such credit because he was residing in Jackson County before that county was moved out of District 4 during the April 2002 reapportionment.

The key legal question in this case is, therefore, whether an exception may be made to the normal residency requirement contained in O.C.G.A. § 46-2-1(b) in the elections held immediately after district lines are redrawn during the reapportionment process. This administrative law judge has been unable to locate any legal authority on this issue as it specifically relates to elections involving the PSC; however, two unofficial opinions of the Attorney General of Georgia discuss this issue in the context of the durational residency requirements contained in the Georgia Constitution for candidates to the Georgia General Assembly.

3.

After the 1981 reapportionment of the General Assembly, the Attorney General held that a candidate for the Georgia House of Representatives could not claim an exemption from the constitutional requirement that he reside in a particular numbered district prior to the election on the basis that he had lived in that particular district for more than a year before the redrawing of district lines involved in the reapportionment process placed his residence out of the district. The Attorney General held that "[a]bsent any exception to the statute's residency requirement, either in statute or implied by judicial interpretation, it is reasonable to assume that the statute applies its requirements regardless of the effects of reapportionment." 1981 Op. Att'y Gen. U81-28.

4.

In a recent unofficial opinion involving the latest reapportionment, the Attorney General reaffirmed the holding of the 1981 unofficial opinion and stated, "I know of no authority that would permit the waiver of the Constitution's **durational** residency requirements. Indeed, the Constitution's language provides that while a person is not always eligible to run for the particular numbered district he prefers, every person who has maintained a permanent residence for one year within a newly drawn district would meet the **durational** residency requirements for purposes of running for office." 2001 Op. Att'y Gen. U2001-3.

5.

In the recent decision of *Johnson v. Barnes*, U.S.D.C., ND Atlanta, Civil Action File No. 1:02-cv-0877-WBH, 6/20/02,

Judge Willis Hunt declined to stay the enforcement of the district residency requirements involving Georgia's recent reapportionment of the General Assembly. Judge Hunt held that the residency requirements are enforceable. In fact, one of the plaintiffs in that case, Mr. Merlino, missed the durational residency requirement for House District 32 by only three weeks. The Court held that this nevertheless prevented Mr. Merlino from running in this election. *Id.* at 17. The facts involving Mr. Merlino are somewhat similar to the present case because prior to moving to his present domicile, Mr. Merlino had resided in the old House District number 32. In Judge Hunt's opinion, Mr. Merlino's residency in the old House District number 32 did not assist him in qualifying for the new House District number 32.

6.

This administrative law judge finds the reasoning of the above legal authority on the effect of reapportionment on the durational residency requirements for the General Assembly to be persuasive and applicable to the durational residency requirements for PSC Commissioners found in O.C.G.A. § 46-2-1(b). Just as they are in the General Assembly, the durational residency requirements relating to the PSC districts are intended to ensure that candidates are familiar with the needs, problems and desires of their particular districts.

7.

Because O.C.G.A. § 46-2-1(b) contains no exceptions to the twelve month residency requirement and there appears to be no judicial interpretation of the statute creating such

an exception, this administrative law judge finds that the Respondent does not meet the one year residency requirement for a candidate for District 4 of the PSC because he will not have lived in the current District 4 for one year at the time of the General Election in November 2002.

8.

There was much evidence presented at the hearing as to whether the Respondent has actually changed his residency from Jackson to Banks County. Given my ruling that, even if the Respondent is correct in his assertion that he changed his permanent residency to Banks County on January 15, 2002, the Respondent does not meet the one-year residency requirement contained in O.C.G.A. § 46-2-1(b); therefore there is no need to resolve this issue in this decision.

9.

During the hearing, counsel for the Respondent contended that if O.C.G.A. § 46-2-1(b) requires a candidate for a district seat on the PSC to have resided in a newly drawn district for one year prior to the election such a durational residency requirement contained in the statute would violate the due process clause, the equal protection clause and the First Amendment of the United States Constitution and the Georgia Constitution (T.17-21). While these constitutional issues are noted for the record, this administrative law judge lacks authority to rule on them. OSAH Rules 616-1-2-.22(3); *Flint River Mills v. Henry*, 239 Ga. 347 (1977).

IV. DECISION

It is the decision of this administrative law judge that the Respondent does not meet the durational residency requirements found in found in O.C.G.A. § 46-2-1(b) to be a candidate for District 4 of the Georgia Public Service Commission, in that he will not have resided in District 4 for a period of one year on the date of the General Election on November 5, 2002.

This the 30th day of July, 2002.

/s/ W. Joseph Baird
W. Joseph Baird
Administrative Law Judge

BEFORE THE SECRETARY OF STATE

STATE OF GEORGIA

In the matter of:	:	
LAUREN "BUBBA" MCDONALD,	:	
Petitioner,	:	**Docket No.**
V.	:	**OSAH-ELE-CE-0300328-78-WJB**
J. MAC BARBER,	:	
Respondent.	:	

FINAL DECISION AND ORDER OF THE SECRETARY OF STATE

The above-styled matter was referred to the Office of State Administrative Hearings for a review of evidence pursuant to O.C.G.A. §§ 21-2-5(b) and 50-13-41(a)(1), and a hearing was held on July 19, 2002, at which Respondent and Petitioner appeared and both parties were represented by counsel.

The Administrative Law Judge (ALJ) submitted an Initial Decision pursuant to O.C.G.A. § 50-13-41(c), a copy of which is attached hereto. The ALJ concluded that the Respondent had not resided within Public Service Commission District 4 for the requisite one-year period described in O.C.G.A. § 46-2-1(b).

I agree with the Initial Decision, and hereby adopt the ALJ's Findings of Fact and Conclusions of Law as the findings of act and conclusions of law in this matter, and incorporate said findings and conclusions into this Final Decision and Order by reference.

Based upon these findings and conclusions of law, I HEREBY FIND that the Respondent in this case has

failed to meet the qualifications for candidacy required by Georgia law. I conclude that Respondent is therefore DISQUALIFIED from seeking the District 4 seat on the Georgia Public Service Commission. Respondent's name shall be stricken from the primary ballots for this race, and if ballots for this race have been printed, any votes cast for Respondent shall not be counted and such votes shall be void and of no effect.

This 31st day of July, 2002.

/s/ Cathy Cox
CATHY COX
Secretary of State

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

J. MAC BARBER, Plaintiff, vs. CATHY COX, in her Official Capacity as Secretary of State of the State of Georgia, Defendant.	)	CIVIL ACTION FILE NO. 2002-CV-56692 (Filed Aug. 7, 2002)

ORDER AND JUDGMENT

Plaintiff having appealed the final decision and Order of the Secretary of State dated July 31, 2002, by filing a Petition in this Court as required by law, and

IT APPEARING THAT the eligibility of Plaintiff to be a candidate for the District 4 seat on the Public Service Commission was challenged by an elector because Plaintiff will not have resided in District 4 as it is presently configured for one year prior to the General Election on November 5, 2002, and

IT APPEARING THAT said challenge was heard on July 19, 2002, before an Administrative Law Judge of the Office of the State Administrative Hearings, and

IT APPEARING THAT said Administrative Law Judge issued his opinion on July 30, 2002, in which he concluded that Plaintiff does not meet the twelve month residency requirements contained in O.C.G.A. § 46-2-1(b) because Plaintiff will not have lived in District 4 for twelve months from the time it was reconfigured on April 11, 2002 to the general election on November 5, 2002, and

IT APPEARING THAT the decision of the Administrative Law Judge was adopted by the Secretary of State in a decision dated July 31, 2002, in which the Secretary of State ordered that Plaintiff is disqualified from seeking the District 4 seat on the Georgia Public Service Commission and that Plaintiff's name shall be stricken from the primary ballots for this race, and if ballots for this race have been printed, any votes cast for Plaintiff shall not be counted and such vote shall be void and of no effect, and

IT APPEARING THAT Plaintiff raised constitutional issues concerning the twelve month residency requirements of O.C.G.A. § 46-2-1(b), but these constitutional issues were not passed on by the Administrative Law Judge, and

IT APPEARING THAT Plaintiff is a legal resident of District 4, having become a legal resident of Jackson County on December 15, 2000, and having continued as such until January 15, 2002, at which time he became a legal resident of Banks County, and

IT APPEARING THAT Jackson County, where the Plaintiff resided until January 15, 2002, along with twelve other counties and part of Gwinnett County was removed from District 4 by an Act of the General Assembly effective April 11, 2002, at which time four additional counties and a part of Gwinnett County were added to District 4, and

IT APPEARING THAT the decisions of the Administrative Law Judge and the Secretary of State have applied O.C.G.A. § 46-2-1(b) to mean that Plaintiff had to live within "District 4 as it has been configured since reapportionment" for twelve months prior to the general election on November 5, 2002, and

THIS CASE having come on for hearing on August 6, 2002, and this Court having heard and considered the arguments of counsel for Plaintiff and counsel for Defendant and the applicable law, and having reviewed and considered a certified copy of the entire record of the proceedings under review.

IT IS CONSIDERED, ORDERED AND ADJUDGED that:

(a) so much of the provisions of O.C.G.A. § 46-2-1(b) as provides: "In order to be elected as a member of the commission from a Public Service District, a person must have resided in *that District* for at least 12 months prior to election thereto.", (underlining supplied) is unconstitutional as it applies to Plaintiff by disqualifying Plaintiff from seeking the District 4 seat on the Georgia Public Service Commission because he will not have resided within District 4 as it has been reconfigured since reapportionment (April 11, 2002) for one year prior to the November 5, 2002, General Election, said provision as thus applied being in violation of the Constitutions of the State of Georgia and the United States, and especially of the Equal Protection clauses of the Constitutions of the State of Georgia and the United States, and

(b) Plaintiff is therefore qualified to seek the District 4 seat on the Georgia Public Service Commission, and

(c) The Secretary of State if ordered to take whatever steps are necessary to ensure that Plaintiff's name is on the appropriate primary ballots for the District 4 seat on the Georgia Public Service Commission.

THIS DECISION is limited to the instant case and to the 2002 elections, it appearing that over twelve months will have passed before the 2003 general elections.

IT IS SO ORDERED, this 7th day of August, 2002.

/s/ John S. Langford
JOHN S. LANGFORD
Senior Judge, Georgia
Superior Courts

Order prepared by:

/s/ Nick P. Chilivis
Nickolas P. Chilivis
Georgia Bar No. 124800
Counsel for Plaintiff

Chilivis, Cochran, Larkins & Bever LLP
3127 Maple Drive, N.E.
Atlanta, GA 30305
(404) 233-4171

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March 1999
to
March 2000

Issued May 2001

Geographical Mobility

Population Characteristics

Current Population Reports

By Jason Schachter

Geographical mobility has long been an important aspect of American life. This report highlights some of the changes that have occurred in recent years, including differences in the extent of movement, in the types of movement, in the characteristics of movers compared with nonmovers, and in how the population is distributed. These changes are important to federal, state, and local governments as they plan for needed services and facilities such as schools and hospitals. Geographical mobility data are also used by private industry as they expand and locate businesses and other services.

All respondents in the March 2000 Current Population Survey were asked whether they lived at the same residence 1 year earlier. Nonmovers were living in the same home at both dates. Movers were asked for the location of their previous residence. When current and previous

residences are compared, movers can be categorized by whether they were living in the same or different county, state, region, or were movers from abroad. Though not true in all cases, we treat these different types of moves as if they form a distance continuum. In addition, movers can be categorized by whether they moved within or between metropolitan areas, central cities of metropolitan areas, other parts of metropolitan areas, or nonmetropolitan areas of the United States.

About 43 million Americans moved.

Between March 1999 and March 2000, 43.4 million Americans moved.[1] Over half (56 percent) of these moves were local (within the same county), 20 percent were between counties in the same state, and 19 percent were moves to a different state. Only 4 percent of movers came from abroad.

[Figure 1 Omitted In Printing]

[Table A Omitted In Printing]

The overall moving rate has stayed constant, but people moved longer distances.

Overall moving rates have not changed substantially over the past few years, and the 1999-2000 rate is among the lowest rates found during the past decade. However, since

[1] The estimates in this report are based on responses from a sample of the population. As with all surveys, estimates may vary from the actual (population) values because of sampling variation, or other factors. All statements made in this report have undergone statistical testing and meet U.S. Census Bureau standards for statistical accuracy.

1998, there has been a decrease in the percentage of moves made within the same county and a corresponding increase in the percentage of moves between counties, particularly to counties in different states. In 1998, 64 percent of all moves were within the same county, compared with 56 percent of all moves in 2000.[2] Similarly, in 1998, 15 percent of all moves were between states, compared with 19 percent of all moves in 2000.

CHARACTERISTICS OF MOVERS

Moving rates differ by characteristics like age, race, Hispanic origin, income, housing tenure, marital status, and education. Table B shows mobility rates by many of these characteristics.

[Figure 2 Omitted In Printing]

20- to 29-year olds had the highest moving rates.

About one-third of 20- to 29 year olds moved in the previous year, a little more than twice the moving rate of all people 1 year and older (16 percent). Among adults, as age increased moving rates decreased, at least until very advanced ages: by ages 65 to 84, the rate was only 4 percent. Moving rates were higher for young adults because of their relatively higher frequency of life course events (such as marriage, child birth, or a new job).

[Table B Omitted In Printing]

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[2] These proportions can be calculated from Table A by dividing the percent moved for the type of move (e.g. within the same county) by the total percent moved.

White non-Hispanics were less mobile than other racial and ethnic groups.[3]

White non-Hispanics had the lowest moving rate (14 percent). Hispanics (of any race) and Asians and Pacific Islanders had the highest overall moving rates (about 20 percent), closely followed by Blacks (19 percent). Among people who moved, Hispanics and Blacks were most likely to have moved within the same county (63 and 61 percent, respectively), while White non-Hispanics were most likely to have made intercounty and interstate moves (44 percent).[4] Asians and Pacific Islanders and Hispanics were much more likely than Blacks or White non-Hispanics to have come to the United States from abroad.

Table C shows that some of the mobility difference between White non-Hispanics and other racial and ethnic groups can be attributed to age. For example, Hispanic moving rates were higher than White non-Hispanics in most age categories. However, standardized overall moving rates show that even if the Hispanic population had the same age distribution as the White non-Hispanic population, the moving rate would still have been higher for Hispanics (18 percent compared with 14 percent).

[Table C Omitted In Printing]

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[3] Data for the American Indian and Alaska Native population are not shown in this report because of the small sample size in the Current Population Survey. Based on the March 2000 Current Population Survey, 3 percent of the Black population and 2 percent of the Asian and Pacific Islander Population are also of Hispanic origin.

[4] See footnote 2.

Single and divorced people were more likely to move than married people.

Among those 16 years and older, single and divorced or separated people were most likely to have moved, followed by married people. Widowed people were least likely to have moved. Age could explain some of this variation, particularly the higher moving rates of those never married and the lower rates of widowed people. People living in married-couple family households were less likely to have moved than those living in other types of households.

One-third of renters moved.

Nearly one-third of people living in renter-occupied housing units in March 2000 moved in the previous year, compared with only 1 in 11 people living in owner-occupied housing units.[5] Housing tenure is closely related to age, race, Hispanic origin, and income. Those living in owner-occupied housing units are more likely to be older, White non-Hispanic and more affluent than those living in renter-occupied units.

Lower-income groups were more likely to move than higher-income groups.

People living in households in lower-income categories were more likely to move than those in higher-income categories: 21 percent for incomes under $25,000, compared with 12 percent for incomes over $100,000. Some of this disparity may reflect differences in homeownership

[5] As is the case with all characteristics on the Current Population Survey, housing tenure is measured at the time of the survey in March 2000; tenure before the move is not ascertained.

patterns, particularly the higher proportion of renters among households with low incomes.

Additionally, those living in households with income less than $50,000 were more likely than those with higher incomes to move short distances (about 60 percent and 50 percent, respectively). Some of these differences could be explained by factors like educational differences, differences in reasons for moving, and potentially higher costs associated with making longer distance moves.

Moving rates differ by the poverty status of individuals. Those with income below the poverty level were more likely to have moved (28 percent) than those with income 150 percent above the poverty level or higher (14 percent). Also, those with income below the poverty level were more likely to have made a short-distance move (about 61 percent) than those in the higher income group (about 54 percent).

People of different education levels had similar moving rates.

There were only small differences in moving rates by education, ranging from 12 percent of those with only a high school education to 15 percent of those with a bachelor's degree. However, movers with a bachelor's degree were more likely to have moved longer distances: 47 percent made an intercounty move compared with 34 percent of those with less than a high school education. This difference could indicate that better educated people move longer distances for better paying jobs.

REGIONAL MOVEMENTS

Interstate migration, along with differences in rates of natural increase (births minus deaths), changes the distribution of the population among regions of the country. In recent decades, more people have moved from North to South than in the opposite direction, and this trend continued. Figure 3 shows the flows of migrants among the four major regions of the United States between 1999 and 2000.

[Figure 3 Omitted In Printing]

Only the Northeast had a net loss in population because of internal migration.

As found throughout the 1990s, more people moved from the Northeast than to it from other regions of the country. Of all the regions, only the net loss of 252,000 people for the Northeast and the net gain of 227,000 people for the South were statistically significant for the 1999-2000 year.

Nonmetropolitan areas had net internal migration close to zero.

Nonmetropolitan areas as a whole had about equal numbers of internal inmigrants and outmigrants during the year – 1.9 million people compared with 2.0 million, as shown in Table D. These numbers are not statistically different.

[Table D Omitted In Printing]

Within metropolitan areas, central cities had net outmigration, while the population outside central cities had net inmigration.

Metropolitan areas outside central cities were the most frequent destination among movers within and between metropolitan areas. Although metropolitan areas as a whole had about equal numbers of inmigrants and outmigrants, central cities of metropolitan areas followed the migration pattern found throughout the 1990s: continued net migration loss. Between 1999 and 2000, 6.9 million people moved out of central cities, while 3.7 million moved in, resulting in a net loss due to internal migration of 3.2 million people.

Movers from abroad added population to the West and helped offset net internal migration losses for the Northeast.

Between March of 1999 and 2000, the CPS estimates that 1.75 million people moved to the United States from abroad. Two-thirds of these movers were foreign-born and not United States citizens (1.2 million), while the other third were civilian citizens (600,000). Most movers from abroad (1.2 million) came to the South and West.

The CPS does not collect data on the number of people who move away from the United States, and thus it is not possible to use the CPS to estimate net international migration. However, the Census Bureau does provide independently derived estimates for net international migration using administrative records and other data. The components of net international migration include: legal immigration to the United States as reported by the Immigration and Naturalization Service; refugee data from the Office of Refugee Resettlement; an estimate of

net undocumented immigration from abroad, based on data from the Immigration and Naturalization Service and the 1990 decennial census; an estimate of emigration from the United States based on data from the 1980 and 1990 censuses; and net movement between Puerto Rico and the United States.

These estimates based on administrative records indicate that 852,000 more people came to the United States from abroad than left between July 1 of 1998 and 1999, the latest year for which these estimates are available. Combining these estimates by region with regional net domestic migration figures suggests that all regions except the Northeast showed significant population gains from net migration. While the West did not experience a significant gain in population from domestic migration, it did grow when net international migration is included. Although the Northeast still had a significant loss of people, this loss was mitigated by net international migration.

SOURCE OF DATA

Most estimates in this report come from data collected in March 2000 by the CPS. The CPS is a monthly national survey of about 50,000 households, representative of the civilian noninstitutional population of the United States. Some estimates are based on data collected by the CPS in earlier years. The Census Bureau conducts the CPS every month but collects the data on residential mobility only in March.

ACCURACY OF ESTIMATES

Statistics from sample surveys are subject to sampling and nonsampling error. All comparisons presented in this report have taken sampling error into account and meet the Census Bureau's standards for statistical significance. Nonsampling errors in surveys may be attributed to a variety of sources, such as how the survey was designed, how respondents interpret questions, how able and willing respondents are to provide correct answers, and how accurately answers are coded and classified. The Census Bureau employs quality control procedures throughout the production process – including the overall design of surveys, testing the wording of questions, reviewing the work of interviewers and coders, and statistical review of reports.

The CPS employs ratio estimation, whereby sample estimates are adjusted to independent estimates of the national population by age, race, sex, and Hispanic origin. This weighting partially corrects for bias due to undercoverage, but how it affects different variables in the survey is not precisely known. Moreover, biases may also be present when people who are missed in the survey differ from those interviewed in ways other than the categories used in weighting (age, race, sex, and Hispanic origin). All of these considerations affect comparisons across different surveys or data sources.

For further information on statistical standards and the computation and use of standard errors, contact Alfred Meier, Demographic Statistical Methods Division, at 301-457-4220 or on the Internet at Alfred.G.Meier@census.gov.

MORE INFORMATION

A set of detailed tabulations consisting of 30 tables from the 2000 March CPS shows more detailed characteristics of movers and nonmovers by type of move for the United States and the regions. The electronic version of these tables is available on the Internet at the Census Bureau's World Wide Web site (*www.census.gov*). Once on the site, go to "Subjects A to Z," then click on "M," and finally on "Migration."

An abbreviated paper version of the tables (without the race and geographic repeats) is available as PPL-144 for $24.50. To receive a paper copy, send a request for "PPL-144, Geographical Mobility: March 1999 to March 2000," along with a check or money order in the amount of $24.50 payable to Commerce-Census-88-00-9010, to the U.S. Department of Commerce, Census Bureau, P.O. Box 277943, Atlanta, GA 30384-7943, or call the Population Division's Statistical Information Office on 301-457-2422. A copy of these tabulations will be made available to any existing Current Population Report P20 subscriber without charge, provided that the request is made within 3 months of the issue date of this report.

CONTACTS

Statistical Information Staff
pop@census.gov
301-457-2422

Jason Schachter
jason.p.schachter@census.gov
301-457-2454

USER COMMENT

The Census Bureau welcomes the comments and advice of users of our data and reports. If you have any suggestions or comments, please write to:

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U.S. Census Bureau
Washington, DC 20233

or send e-mail to:
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Population Characteristics

Geographical Mobility: March 1995 to March 1996

Current Population Reports

CENSUS BUREAU

By Kristin A. Hansen

P20-497

Issued November 1997

Geographical mobility has long been one of the predominant factors in American life. This report highlights some of the important changes that have occurred in recent years, including changes in the volume and rates of movement, changes in the types of movement, differences in the characteristics of movers compared with nonmovers, and changes in the patterns of population distribution attributable to residential migration. These changes are important to federal, state, and local governments as they plan for needed services and facilities such as schools and hospitals. These data are also used by private industry to plan expansion and location of businesses and other services.

[Figure 1. Omitted In Printing]

All persons in the March CPS sample were asked whether or not they lived in the same house or apartment one year earlier. Nonmovers were living in the same house at both dates. Movers were asked for the location of their previous residence. When current and previous residence are compared, movers can be categorized as to whether they were living in the same or different county, state, region, or were movers from abroad. They can also be categorized by whether they moved within or between central cities, suburbs, and nonmetropolitan areas of the United States.

About 43 million American moved

Between March 1995 and March 1996, 42.5 million Americans moved. Most of them, 26.7 million, moved from one residence to another within the same county; another 8 million moved between counties within the same state; and 6.5 million changed states. Additionally, during that one-year period, about 1.4 million persons moved into the United States from abroad.

Moving rates continue to decline

Despite the large number of moves that occurred between March 1995 and March 1996, the percentage of Americans who moved was only 16.3 percent – a decline from the rates in earlier decades. Table A shows the annual mobility rates for the past 5 years. While the apparent changes in the moving rates from one year to the next are not statistically significant, over time they add up to an important decline in the overall moving rate. The annual mobility rate was around 20 percent for most years during the 1950s and 1960s and then gradually declined to a low of 16.6 percent in 1983. Following a short-term increase in mobility rates during the mid-1980s (peaking at 20.2 percent between March 1984 and March 1985), rates again fell to the 1983 levels. The 1996 and 1983 rates are not statistically different.

Most moves are local

Most movers stay in the same county. In fact, nearly two-thirds of the movers between March 1995 and March 1996 made this type of "local" move. Moves which cross state lines or cross county boundaries within the same state could be considered local moves if they are within the

same commuting area. In this report, however, all inter-county moves are considered "long-distance" moves. Movers are somewhat more likely to move between counties in the same state (18.8 percent) than to move between states (15.2 percent).

[Table A. Omitted In Printing]

Young adults move the most

The highest moving rates are for people in their twenties as shown in Figure 2. About one-third of people 20 to 29 years old moved in the previous year. This is twice the rate for all persons 1 year and older (16.3 percent). Moving rates continue to decline as age increases to 21.9 percent for people 30 to 34 years old, 14.1 percent for those 35 to 44 years old, 9.8 percent for those 45 to 54 years old, and 6.6 percent for people 55 to 64 years old. The apparent differences in the moving rates for age groups over 65 years are not significant.

[Figure 2. Omitted In Printing]

Whites move less

Whites have lower overall rates of moving (15.7 percent) than either Blacks or Asian and Pacific Islanders – about 20 percent for both groups. Persons of Hispanic origin[1] have the highest rates of moving (23.0 percent). These differences in rates of moving by race and ethnicity are partly the result of the differences in age structure among the different racial groups. The median age of all Whites is 35.4 years, compared with about 30 years for

[1] Persons of Hispanic origin may be of any race, but 95.6 percent of Hispanics in the 1996 CPS reported their race as White.

both Blacks and for Asian and Pacific Islanders, and 26.3 years for Hispanics.

A similar pattern is observed for local movers; the only difference is where Asian and Pacific Islanders rank. Whites and Asian and Pacific Islanders have the lowest rates of moving within the same county, while Hispanics have the highest rate. The rate for Blacks is higher than the rate for Whites and Asian and Pacific Islanders but lower than the rate for Hispanics.

It is difficult to discern patterns of differences in mobility rates among race and/or Hispanic origin groups for longer distance moves. While there is no statistically significant difference in the rates of moving between counties within the same state for Blacks and Whites, Whites are more likely to move to a different state. Hispanics have much higher rates of moving from abroad (1.8 percent) than Blacks or Whites, although not as high as Asian and Pacific Islanders (3.0 percent).

[Table B. Omitted In Printing]

About 1.4 million moved from abroad

The majority of people moving from abroad were immigrants from foreign countries and temporary residents such as foreign college students. As shown in Table B, two-thirds of all movers from abroad were not U.S. citizens. Native-born movers from abroad include people coming into the country from Puerto Rico or outlying areas of the United States such as the U.S. Virgin Islands, Guam, the Northern Marianas, or American Samoa; members of the U.S. Armed Forces and their dependents returning from assignment overseas; and other U.S. citizens returning from foreign countries.

Most movers from abroad were between 20 and 64 years old (66.0 percent); few were over 65 (1.4 percent). The remainder were children and teens under the age of 20 (32.7 percent). Over one-third (37.5 percent) were of Hispanic origin, although Hispanics make up only 10.6 percent of the total population. While 70.5 percent of the movers from abroad (including most of the Hispanics) were White, one-fifth were Asian or Pacific Islanders (21.2 percent).

One-third of renters moved

One-third of persons living in renter-occupied housing units in March 1996 moved in the previous year (33.5 percent).[2] In contrast, only one in twelve persons in owner-occupied housing units moved in the same period (8.2 percent). Renters have vastly higher rates of moving than owners for all types of moves.

Tenure (owner/renter status) is closely related to age, race, and Hispanic origin. Renters are, on average, younger than homeowners. The median age of all persons living in renter-occupied housing units was 27.9 years, compared with 38.4 years for all persons living in owner-occupied housing units. There are also differences by race and Hispanic origin. While nearly three-quarters of Whites (71.7 percent) and more than half of Asian and Pacific Islanders (56.8 percent) lived in owner-occupied

[2] Tenure (whether the person is living in a housing unit occupied by owners or renters) has a very strong correlation with mobility rates. Tenure (as shown in Table D) is owner/renter status at the time of the survey in March 1996; tenure before the move is not available from the Current Population Survey.

units, more than half of Blacks and Hispanics were living in rental units (52.5 and 56.1 percent, respectively).

Regional movement

Interstate migration acts to redistribute the population among the regions of the country, and westward migration, which has long been a factor in the settlement of this country, continues. In addition, population flowed from the more rural south to the more industrialized north following the Civil War and throughout the first half of this century. However, the direction of interregional migration has shifted, and in recent decades more people have moved from north to south than in the opposite direction.[3] Flows of migrants among the four major regions of the United States between 1995 and 1996 are illustrated in Figure 3.

Northeast has net loss

Table C shows inmigration, outmigration, and net internal migration for each of the four major regions between 1995 and 1996. Only the net loss of 234,000 shown for the Northeast is statistically significant. For each of the other three regions, net migration is not significantly different from zero.

When the movers from abroad are included in the net migration figures for each region, all regions except the

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[3] Larry Long, "Migration and Residential Mobility in the United States," Russell Sage Foundation, New York, NY, 1988.

Northeast -had significant net population gains.[4] The Northeast had enough movers from abroad to offset its net loss domestically.

[Table C. Omitted In Printing]

Westerners move the most

Westerners had the highest rates of moving (20.9 percent) compared with people living in the other four regions in 1996. (See Table D for the numbers of movers and type of move by region.) The Northeast had the lowest overall moving rate; its rate of 11.6 percent was well below the national rate of 16.3 percent. People living in the Midwest also had lower than average moving rates – 14.3 percent of those living there had moved in the previous year. In contrast, Southerners joined Westerners with higher overall moving rates than the national average – 17.4 percent.

[Table D. Omitted In Printing]

Regional differences exist by type of move as well. The West had a higher percentage of local movers (13.9 percent moved within the same county) than found nationally, while the Northeast and the Midwest had lower rates than average (7.5 and 8.9 percent, respectively, compared with 10.3 percent nationally). The rate of local moving in the South was no different than the national average.

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[4] The number of people moving out of the United States is not available but the Census Bureau estimates it as only about 222,000 annually. See Kevin Deardorff and Frederick Hollman, "U.S. Population Estimates by Age, Sex, Race and Hispanic Origin", PPL-57, U.S. Census Bureau, Washington DC 20233, March 1997.

Long distance moves are much less common than local moves regardless of region but, as with local moves, there are differences from region to region. The Northeast, the Midwest, and the South all had rates of moving between counties within the same state (2.1, 2.8, and 3.6 percent, respectively) that were statistically different from the national rate (3.1 percent). Interstate moving rates were smaller than inter-county moves within states for all regions except the West. The Northeast had the lowest interstate moving rate (1.5 percent), but the rate found in the Midwest (2.3 percent) was also lower than the rates for the other two regions (2.9 percent).

[Table E. Omitted In Printing]

Metropolitan areas had a net loss of movers

The movement between cities, suburbs,[5] and nonmetropolitan areas during the year was substantial. While 1.5 million people moved into metropolitan areas from the nonmetropolitan parts of the country, 1.8 million moved out. As a result of this movement, metropolitan areas[6] as a whole had a significant net loss. During the last ten years, metropolitan areas in the aggregate have had about equal numbers of inmigrants and outmigrants, with the exception of 1992 to 1993 when metropolitan areas had a net

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[5] In this report, the suburbs include all territory within an MSA but outside of a central city.

[6] Metropolitan areas are redefined following each decennial census. The individual metropolitan areas were redefined in 1993 using data from the 1990 decennial census. The Current Population Survey began using these new definitions in 1995. Because of this change, the metropolitan data in this report are not strictly comparable with data from the 1994 or earlier reports.

loss of 317,000 people. During the mid-1980s, metropolitan areas had net gains of 300,000 to nearly half a million. Between 1987 and 1992, metropolitan areas had no significant net gains or losses.

Central cities lost while the suburbs gained

The suburbs were the most popular destinations among movers within and between metropolitan areas. While metropolitan areas as a whole had a small net loss, the cities and suburbs that comprise the metropolitan areas had totally different migration patterns. Between 1995 and 1996, 6,328,000 people moved out of central cities while 3,893,000 moved in, resulting in a net loss due to migration of 2,436,000 people. At the same time, 6,435,000 people moved into the suburbs and 4,275,000 moved out. This gave the suburbs a net gain of 2,160,000 movers.[7]

Movers to nonmetropolitan areas were no more likely to come from central cities than from the suburbs.

Movers from abroad prefer metropolitan locations

Only 105,000 movers from abroad went to nonmetropolitan areas while 1,256,000 went to metropolitan areas. Movers from abroad were no more likely to end up in the suburbs (693,000 persons) than in central cities (563,000 persons). This was also true in the 1993-94 period, but for

[7] The net change and the flows for the central cities are not significantly different than those for the suburbs.

most years during the late 1980s and 1990s movers from abroad were most likely found living in central cities.

The estimated number of emigrants from the United States each year of 222,000 is a very small number compared to the 1.4 million gain. When movers from abroad are included in the calculation of net migration, metropolitan areas had a net gain of 981,000 people compared with a net loss of 275,000 due to migration within the United States.

Movers stay close to home

Over half of all movers (24 million) stayed in the same metropolitan area. In contrast, only 8 million people moved between metropolitan areas. Most movers within nonmetropolitan America also stayed close to home. Three quarters of the 5.6 million people who moved from one nonmetropolitan location to another stayed within the same county.

City or suburb?

Three quarters of all movers stayed in metropolitan areas, and more chose suburbia than the central cities as their destination. While 10.8 million people moved within or between central cities of metropolitan areas, 12.7 million moved from one suburban location to another. At the same time 5.5 million left the cities for suburbia but only 3.3 million abandoned the suburbs for city life.

Source of data

Most estimates in this report come from data collected in March 1996 Current Population Survey (CPS). Some

estimates are based on data collected by the CPS in earlier years. The Census Bureau conducts the CPS every month but collects the data on residential migration only in March.

Accuracy of the estimates

All statistics are subject to sampling error, as well as nonsampling error such as survey design flaws, respondent classification and reporting errors, data processing mistakes, and undercoverage. The Census Bureau attempts to reduce errors made by respondents, coders and interviewers through the use of quality control and editing procedures. Ratio estimation to independent age-race-sex-Hispanic origin population controls partially corrects for bias attributable to survey undercoverage. However, biases exist in the estimates when missed persons have characteristics different from those of interviewed persons in the same age-race-sex-Hispanic origin group.

Analytical statements in this report have been tested and meet statistical standards. However, because of methodological differences, use caution when comparing these data with data from other sources. Contact Don Keathley, Demographic Statistical Methods Division, at 301-457-4182 or on the Internet at dkeathley@census.gov for information on the source of the data, the accuracy of the estimates, the use of standard errors, and the computation of standard errors.

More information

A package of tables showing more detailed characteristics of movers and nonmovers by type of move, for the

United States and regions, is available from the Census Bureau. Characteristics include age, sex, race, Hispanic origin, educational attainment, marital status, household relationship, family type, ages of own children by type of family, labor force status, occupation, industry, and income. These tables are available on paper for $38 (PPL-69) from the Population Division's Statistical Information Staff at 301-457-2422.

The detailed tables are also on the Internet: (http://www.census.gov). Look for "Migration" in the "Subjects A to Z" index. There is other migration information at that location including data from the 1990 Census and a few time series tables with data from past CPS reports. Data on net migration for states and counties calculated as a residual from the Census Bureau's Population Estimates program are also on the Internet; see "Estimates" in the "Subjects A to Z" index.

More geographically detailed migration data from the 1990 Census are also available. See data on "Residence in 1985" for states, counties, and cities, and metropolitan areas in CP-2, "Social and Economic Characteristics" and CP-3, "Census Tracts". Public use microdata files (PUMS) and data on CD-ROM's are available from Customer Services at 301-457-4100. The special migration files on CD-ROM include SP-312, "County to County Migration Flow Files" and SSTF-15, "Geographic Mobility in the United States" (data for states and metropolitan areas).

Contacts

Statistical Information Staff
pop@census.gov
301-457-2422

Kristin A. Hansen
kahansen@census.gov
301-457-2454

User comments

The Census Bureau welcomes the comments and advice of users of our data and reports. If you have any suggestions or comments, please write to:

Chief, Population Division
U.S. Bureau of the Census
Washington, DC 20233

or send E-mail to:
pop@census.gov

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*** ARCHIVE DATA ***

*** THIS SECTION IS CURRENT THROUGH THE 1998 SUPPLEMENT ***
*** (1998 SESSION OF THE GENERAL ASSEMBLY) ***

TITLE 46. PUBLIC UTILITIES AND PUBLIC TRANSPORTATION

CHAPTER 2. PUBLIC SERVICE COMMISSION

ARTICLE 1. ORGANIZATION AND MEMBERS

O.C.G.A. § 46-2-1 (1998)

§ 46-2-1. Election of Commissioners; terms of office

(a) The Georgia Public Service Commission shall consist of five members to be elected as provided in this Code section. The members in office on January 1, 2000, and any member appointed or elected to fill a vacancy in such membership prior to the expiration of a term of office shall continue to serve out their respective terms of office. As terms of office expire, new members elected to the commission shall be required to be residents of one of five Public Service Commission Districts as hereafter provided, but each member of the commission shall be elected state wide by the qualified voters of this state who are entitled to vote for members of the General Assembly. Except as otherwise provided in this Code section, the election shall be held under the same rules and regulations as apply to the election of Governor. The Commissioners, who shall give their entire time to the duties of their offices, shall be elected at the general election next preceding the expiration of the terms of office of the respective incumbents.

Their terms of office shall be six years and shall expire on December 31.

(b) In order to be elected as a member of the commission from a Public Service Commission District, a person must have resided in that district for at least 12 months prior to election thereto. A person elected as a member of the commission from a Public Service Commission District by the voters of Georgia must continue to reside in that district during the person's term of office or that office shall thereupon become vacant.

(c) For the purpose of electing the members of the Public Service Commission, the state shall be divided into five Public Service Commission Districts described as follows:

District No. 1
APPLING
ATKINSON
BACON
BALDWIN
BEN HILL
BERRIEN
BLECKLEY
BRANTLEY
BRYAN
BULLOCH
BURKE
CAMDEN
CANDLER
CHARLTON
CHATHAM
CLINCH
COFFEE
COLUMBIA
DODGE

ECHOLS
EFFINGHAM
EMANUEL
EVANS
GLASCOCK
GLYNN
HANCOCK
IRWIN
JEFF-DAVIS
JEFFERSON
JENKINS
JOHNSON
LANIER
LAURENS
LIBERTY
LONG
MCDUFFIE
MCINTOSH
MONTGOMERY
PIERCE
RICHMOND
SCREVEN
TATTNALL
TELFAIR
TOOMBS
TREUTLEN
TWIGGS
WARE
WARREN
WASHINGTON
WAYNE
WHEELER
WILKINSON

District No. 2
BAKER
BIBB
BROOKS

BUTTS
CALHOUN
CHATTAHOOCHEE
CLAY
COLQUITT
COOK
CRAWFORD
CRISP
DECATUR
DOOLY
DOUGHERTY
EARLY
GRADY
HARRIS
HEARD
HOUSTON
JASPER
JONES
LAMAR
LEE
LOWNDES
MACON
MARION
MERIWETHER
MILLER
MITCHELL
MONROE
MUSCOGEE
PEACH
PIKE
PULASKI
PUTNAM
QUITMAN
RANDOLPH
SCHLEY
SEMINOLE
STEWART
SUMTER

TALBOT
TAYLOR
TERRELL
THOMAS
TIFT
TROUP
TURNER
UPSON
WEBSTER
WILCOX
WORTH

District No. 3
CLAYTON
DEKALB
FULTON – [Tract Information Deleted]

* * *

District No. 4
BANKS
BARROW
CATOOSA
CHEROKEE
CLARKE
DADE
DAWSON
ELBERT
FANNIN
FORSYTH
FRANKLIN
GILMER
GREENE
GWINNETT
HABERSHAM
HALL
HART
JACKSON
LINCOLN

LUMPKIN
MADISON
MORGAN
MURRAY
OCONEE
OGLETHORPE
PICKENS
RABUN
STEPHENS
TALIAFERRO
TOWNS
UNION
WALKER
WALTON
WHITE
WHITFIELD
WILKES

District No. 5
BARTOW
CARROLL
CHATTOOGA
COBB
COWETA
DOUGLAS
FAYETTE
FLOYD
FULTON – [Tract Information Deleted]

* * *

GORDON
HARALSON
HENRY
NEWTON
PAULDING
POLK
ROCKDALE
SPALDING

(d) The first members of the commission elected under this Code section shall be elected thereto on the Tuesday next following the first Monday in November, 2000, from Public Service Commission Districts 3 and 5, shall take office on the first day of January immediately following that election, and shall serve for terms of office of six years and until the election and qualification of their respective successors. Those members of the commission elected thereto on the Tuesday next following the first Monday in November, 2002, from Public Service Commission Districts 1 and 4 shall take office on the first day of January immediately following that election and shall serve for terms of office of six years and until the election and qualification of their respective successors. The member of the commission elected thereto on the Tuesday next following the first Monday in November, 2004, from Public Service Commission District 2 shall take office on the first day of January immediately following that election and shall serve for a term of office of six years and until the election and qualification of his or her respective successor. All future successors to members of the commission whose terms of office are to expire shall be elected at the state-wide general election immediately preceding the expiration of such terms, shall take office on the first day of January immediately following that election, and shall serve for terms of office of six years.

HISTORY: Ga. L. 1878-79, p. 125, § 1; Code 1882, § 719a; Civil Code 1895, § 2185; Ga. L. 1906, p. 100, §§ 1-3; Ga. L. 1907, p. 72, § 1; Civil Code 1910, §§ 2615, 2616; Ga. L. 1922, p. 143, § 1; Code 1933, § 93-201; Ga. L. 1998, p. 1530, §§ 1, 2.

NOTES:

THE 1998 AMENDMENT, effective July 1, 1998, rewrote this Code section.

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* THIS DOCUMENT IS CURRENT THROUGH THE 2002 REGULAR LEGISLATIVE SESSION *

TITLE 46. PUBLIC UTILITIES AND PUBLIC TRANSPORTATION

CHAPTER 2. PUBLIC SERVICE COMMISSION

ARTICLE 1. ORGANIZATION AND MEMBERS

GO TO CODE ARCHIVE DIRECTOR FOR THIS JURISDICTION

O.C.G.A. § 46-2-1 (2002)

§ 46-2-1. Election of Commissioners; terms of office

(a) The Georgia Public Service Commission shall consist of five members to be elected as provided in this Code section. The members in office on January 1, 2000, and any member appointed or elected to fill a vacancy in such membership prior to the expiration of a term of office shall continue to serve out their respective terms of office. As terms of office expire, new members elected to the commission shall be required to be residents of one of five Public Service Commission Districts as hereafter provided, but each member of the commission shall be elected state wide by the qualified voters of this state who are entitled to vote for members of the General Assembly. Except as otherwise provided in this Code section, the election shall

be held under the same rules and regulations as apply to the election of Governor. The Commissioners, who shall give their entire time to the duties of their offices, shall be elected at the general election next preceding the expiration of the terms of office of the respective incumbents. Their terms of office shall be six years and shall expire on December 31.

(b) In order to be elected as a member of the commission from a Public Service Commission District, a person must have resided in that district for at least 12 months prior to election thereto. A person elected as a member of the commission from a Public Service Commission District by the voters of Georgia must continue to reside in that district during the person's term of office or that office shall thereupon become vacant.

(c) For the purpose of electing the members of the Public Service Commission, the state shall be divided into five Public Service Commission Districts described as follows:

District 001
Appling County
Atkinson County
Bacon County
Baker County
Ben Hill County
Berrien County
Bleckley County
Brantley County
Brooks County
Bryan County
Bulloch County
Calhoun County
Camden County
Candler County

Charlton County
Chatham County
Chattahoochee County
Clay County
Clinch County
Coffee County
Colquitt County
Cook County
Crisp County
Decatur County
Dodge County
Dooly County
Dougherty County
Early County
Echols County
Effingham County
Evans County
Glynn County
Grady County
Irwin County
Jeff Davis County
Lanier County
Laurens County
Lee County
Liberty County
Long County
Lowndes County
Macon County
Marion County
McIntosh County
Miller County
Mitchell County
Montgomery County
Pierce County
Pulaski County
Quitman County
Randolph County
Schley County

Seminole County
Stewart County
Sumter County
Tattnall County
Telfair County
Terrell County
Thomas County
Tift County
Toombs County
Treutlen County
Turner County
Ware County
Wayne County
Webster County
Wheeler County
Wilcox County
Worth County
District 002
Baldwin County
Barrow County
Bibb County
Burke County
Butts County
Clarke County
Columbia County
Crawford County
Elbert County
Emanuel County
Glascock County
Greene County
Gwinnett County – [Tract Information Deleted]

* * *

Hancock County
Houston County
Jackson County
Jasper County
Jefferson County

Jenkins County
Johnson County
Jones County
Lincoln County
Madison County
McDuffie County
Monroe County
Morgan County
Newton County
Oconee County
Oglethorpe County
Peach County
Putnam County
Richmond County
Rockdale County
Screven County
Taliaferro County
Taylor County
Twiggs County
Walton County
Warren County
Washington County
Wilkes County
Wilkinson County
District 003
Clayton County
DeKalb County
Fulton County
District 004
Banks County
Bartow County
Catoosa County
Chattooga County
Cherokee County
Dade County
Dawson County
Fannin County
Floyd County

Forsyth County
Franklin County
Gilmer County
Gordon County
Gwinnett County – [Tract Information Deleted]

* * *

Habersham County
Hall County
Hart County
Lumpkin County
Murray County
Pickens County
Rabun County
Stephens County
Towns County
Union County
Walker County
White County
Whitfield County
District 005
Carroll County
Cobb County
Coweta County
Douglas County
Fayette County
Haralson County
Harris County
Heard County
Henry County
Lamar County
Meriwether County
Muscogee County
Paulding County
Pike County
Polk County
Spalding County
Talbot County

Troup County
Upson County

(d) The first members of the commission elected under this Code section shall be elected thereto on the Tuesday next following the first Monday in November, 2000, from Public Service Commission Districts 3 and 5, shall take office on the first day of January immediately following that election, and shall serve for terms of office of six years and until the election and qualification of their respective successors. Those members of the commission elected thereto on the Tuesday next following the first Monday in November, 2002, from Public Service Commission Districts 1 and 4 shall take office on the first day of January immediately following that election and shall serve for terms of office of six years and until the election and qualification of their respective successors. The member of the commission elected thereto on the Tuesday next following the first Monday in November, 2004, from Public Service Commission District 2 shall take office on the first day of January immediately following that election and shall serve for a term of office of six years and until the election and qualification of his or her respective successor. All future successors to members of the commission whose terms of office are to expire shall be elected at the state-wide general election immediately preceding the expiration of such terms, shall take office on the first day of January immediately following that election, and shall serve for terms of office of six years.

(e) For purposes of this Code section:

(1) The terms "Tract" and "BG" (Block Group) shall mean and describe the same geographical boundaries as provided in the report of the Bureau of the Census for the

United States decennial census of 2000 for the State of Georgia. The separate numeric designations in a Tract description which are underneath a "BG" heading shall mean and describe individual Blocks within a Block Group as provided in the report of the Bureau of the Census for the United States decennial census of 2000 for the State of Georgia.

(2) Except as otherwise provided in the description of any Public Service Commission District, whenever the description of any Public Service Commission District refers to a named city, it shall mean the geographical boundaries of that city as shown on the census maps for the United States decennial census of 2000 for the State of Georgia.

(3) Any part of the State of Georgia which is not included in any Public Service Commission District described in Subsection (c) of this Code section shall be included within that district contiguous to such part which contains the least population according to the United States decennial census of 2000 for the State of Georgia.

(4) Any part of the State of Georgia which is described in subsection (c) of this Code section as being included in a particular Public Service Commission District shall nevertheless not be included within such Public Service Commission District if such part is not contiguous to such Public Service Commission District. Such noncontiguous part shall instead be included within that Public Service Commission District contiguous to such part which contains the least population according to the United States decennial census of 2000 for the State of Georgia.

HISTORY: Ga. L. 1878-79, p. 125, § 1; Code 1882, § 719a; Civil Code 1895, § 2185; Ga. L. 1906, p. 100, §§ 1-3; Ga. L.

1907, p. 72, § 1; Civil Code 1910, §§ 2615, 2616; Ga. L. 1922, p. 143, § 1; Code 1933, § 93-201; Ga. L. 1998, p. 1530, §§ 1, 2; Ga. L. 2002, p. 359, §§ 1, 2.

NOTES:

THE 1998 AMENDMENT, effective July 1, 1998, rewrote this Code section.

THE 2002 AMENDMENT, effective April 11, 2002, rewrote the descriptions of Public Service Commission Districts 1 through 5 following the colon at the end of the introductory language in subsection (c) and added subsection (e).